

May 4, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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AMENDED REPORT AND RECOMMENDATION

SUBJECT: Department of Development and Environmental Services File No. **L08TY401**
Proposed Ordinance No. **2008-0390**

HILLER (KENT WEST, LLC)
Rezone Application

Location: 23612 Military Road S

Appellant: **Kirk Hiller**
Kent West LLC
232 T Street
Auburn, Washington 98002
Telephone: (206) 795-4000

King County: Department of Development and Environmental Services (DDES)
represented by **Mark Mitchell**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7119
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS/DECISION:

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|--|--------------------------------|
| Department's Preliminary Recommendation: | Approve, subject to conditions |
| Department's Final Recommendation: | Approve, subject to conditions |
| Examiner's Initial Recommendation: | Deny |
| Examiner's Revised Recommendation | Approve, subject to conditions |

EXAMINER PROCEEDINGS:

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|--------------------|-------------------|
| Hearing Opened: | October 23, 2008 |
| Hearing Reopened: | December 16, 2008 |
| Hearing Closed: | December 16, 2008 |
| Hearing Re-opened: | April 28, 2009 |
| Hearing Closed: | April 28, 2009 |

Participants at the public hearings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearings is available in the office of the King County Hearing Examiner.

ISSUES AND TOPICS ADDRESSED:

Required findings for zone reclassification;
Existence of changed circumstances

SUMMARY:

A zone reclassification of 2.27 acres in the urban area, from I-P (use restricted to long-term recreational vehicle storage) to I-P, excluding specified uses, is recommended for approval.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **General Information:**

A request for a zone reclassification from I, Industrial with a P-suffix condition, to I, Industrial (removing the P-suffix condition limiting the uses allowed on the subject property to open/outside storage). The applicant has not proposed a specific use for the site through this application.

Location: 23612 Military Road S, (postal city Kent)

Proponent: Kirk Hiller
Kent West LLC
33313 First Way
Federal Way, Washington 98003
(206) 795-4000

File Number: Rezone L08TY401

Threshold Determination: Determination of Non-significance

Date of Issuance: July 18, 2008

King County Action: Zone Reclassification

Requested Zone: I, Industrial

Existing Zone: I, Industrial (with P-suffix condition limiting use of the property)

Community Plan: Green River Valley

Section/Township/Range: SW 15-22-04 Parcel No.: 1522049053

2. Except as modified herein, the facts set forth in sections B through I in the King County Land Use Services Division's (LUSD) preliminary report to the King County Hearing Examiner for the October 23, 2008, public hearing are found to be correct and are incorporated herein by this reference. The LUSD staff recommends approval of the application, subject to conditions that restrict specified groups of uses.

3. The applicant initially objected to the restriction of any groups of uses from the proposed I (Industrial) classification, and contended that a “case by case” decision should be made with respect to any specific proposed use. The applicant’s position was that a prohibition upon possible uses that may be proposed in the I zone, without knowing the specific use and its impacts, would be speculative.
4. The subject property was rezoned from BN (Neighborhood Business) to I-P in 2001, in response to an application by the then current property owner to authorize the specific use established by a tenant upon the property. That use, long term storage of recreational vehicles, is now permitted and existing on the subject property. By the terms of the current zoning, it is the only use now allowed on this property.
5. King County Code Section 20.24.190 requires that a recommendation by the hearing examiner to reclassify property include “additional findings that support the conclusion that at least one of the following circumstances applies:
 - A. The property is potentially zoned for the reclassification being requested and conditions have been met that indicate the reclassification is appropriate;
 - B. (Not applicable);
 - C. (Not applicable);
 - D. The applicant has demonstrated with substantial evidence that:
 1. Since the last previous area zoning...authorized public improvements, permitted private development or other conditions or circumstances affecting the subject property have undergone substantial and material change not anticipated or contemplated in the subarea plan or area zoning;
 2. The impacts from the changed conditions or circumstances affect the subject property in a manner and to a degree different than other properties in the vicinity such that area rezoning or re-designation is not appropriate...;
 3. (Not applicable);
 4. (Not applicable); and
 5. The requested reclassification or re-designation is in the public interest.”
6. The subject property was not potentially zoned by the King County Council for reclassification to I without any P suffix limitation.
7. On March 23, 2009 the King County Council remanded this application to the Hearing Examiner to allow the applicant to submit evidence and argument concerning changed conditions or circumstances since the last area zoning affecting the subject property.
8. In 2008, Military Road along the frontage of the subject property was reconstructed by King County. This improvement provides improved access. The reconstruction was accomplished using additional right-of-way obtained from the owners of the subject property. This improved access was not anticipated or contemplated when the subject property was zoned I-P by the

county council at the time of the 2000 amendments to the comprehensive plan/land use map, as amended in 2001.

9. Early in 2009, the City of Kent approved an application for a conditional use permit to allow construction of a 142,700-square foot floor area self-storage facility immediately across Military Road S from the subject property. This change in land use was also not anticipated or contemplated when the subject property was zoned I-P in 2001.
10. An existing storage facility, that did exist in 2001, is located immediately north of the subject property.
11. The subject property is limited in use by the current zoning to long term storage of recreational vehicles. The location of three large storage facilities immediately adjacent to one another impacts the subject property in a manner and to a degree different than other properties in the vicinity.
12. The improvement to Military Road S adjacent to the subject property improves the direct access to this property from that minor arterial. This improvement also affects the subject property in a manner and to a degree different than other properties in the vicinity.
13. Area rezoning is not appropriate to address the changed circumstances that affect this property specifically.
14. Residential properties adjacent to the east of the subject property, and in close proximity to the south of the subject property, could be substantially and adversely affected by some uses permitted in the I-zone classification. The applicant, at the re-opened public hearing, agreed that it could accept the recommendation by the Department of Development and Environmental Services (DDES) that certain uses within the I zone classification be precluded. The DDES recommendation is that the zone reclassification to "I" (Industrial) be granted, excluding all uses within the "resource lands" classification, all uses within the "manufacturing" classification that require a conditional use permit or special use permit, any other permitted uses not conducted within an entirely enclosed building, and any uses within the "regional uses" classification requiring a conditional use permit or special use permit.

CONCLUSIONS:

1. The applicant has demonstrated that the property subject to this application has been affected, since the last previous area zoning, by authorized public improvements and permitted private development that affect the subject property in a manner not anticipated or contemplated in the last area zoning. Those conditions and circumstances were substantial and material, and the impacts from those changed conditions and circumstances affect the subject property in a manner and to a degree different than other properties in the vicinity. Area rezoning is not appropriate to address the impacts of the changed conditions and circumstances that affect this specific property.
2. The conditions of reclassification recommended by DDES are necessary and appropriate to protect adjacent and nearby residential properties from the impacts of certain intensive uses that might otherwise be permitted in the "I" zone.

RECOMMENDATION:

Approve reclassification of the subject property from I-P to I-P, with the P suffix condition modified to provide as follows:

Excluding all “I” zone uses within the “resource lands” classification of KCC 21A.08.090;

Excluding any “I” zone uses within the “manufacturing” classification of KCC 21A.08.080 that require a conditional use permit or special use permit;

Excluding any “I” zone uses within the “regional uses” classification of KCC 21A.08.100 that require a conditional use permit or special use permit; and

All uses shall be entirely within an enclosed building, except for usual and customary shipping, delivery and parking activities.

ORDERED this 4th day of May, 2009.

James N. O’Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

In order to appeal this Amended Recommendation by the Examiner, written notice of appeal must be filed with the Clerk of the King County Council ***on or before May 18, 2009***. If a notice of appeal is filed, the original and six copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before May 25, 2009***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal is not filed within 14 calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all

necessary parties within 21 days of the date on which the Council passes an ordinance acting on this matter. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE OCTOBER 23, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L08TY401.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Mark Mitchell, representing the Department; Sands McKinley and Kirk Hiller, representing the Applicant.

The following exhibits were offered and entered into the record October 23, 2008:

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| Exhibit No. 1 | Land Use Permit Application received March 5, 2008 |
| Exhibit No. 2 | Rezone Application received March 5, 2008 |
| Exhibit No. 3 | Supplemental application materials received March 5, 2008 |
| Exhibit No. 4 | Department of Development and Environmental Services (DDES) Preliminary Report, dated October 23, 2008 |
| Exhibit No. 5 | Supplement to DDES Preliminary Report |
| Exhibit No. 6 | Notice of Rescheduled Hearing issued August 22, 2008 |
| Exhibit No. 7 | State Environmental Policy Act (SEPA) Determination of Non-Significance issued July 18, 2008 |
| Exhibit No. 8 | Notice of Decision and SEPA Threshold Determination Recommendation and Hearing issued July 18, 2008 |
| Exhibit No. 9 | Affidavit of Publication in the Seattle Times for a September 4, 2008 hearing date |
| Exhibit No. 10 | Affidavit of Publication in the Kent Journal for a September 4, 2008 hearing date |
| Exhibit No. 11 | Assessors map SW 15-22-04 received March 5, 2008 |
| Exhibit No. 12 | King County Certificate of Sewer Availability dated February 2, 2008 |
| Exhibit No. 13 | Fire District Receipt dated March 4, 2008 |
| Exhibit No. 14 | King County Certificate of Water Availability received March 5, 2008 |
| Exhibit No. 15 | Notice of Application issued April 21, 2008 |
| Exhibit No. 16 | October 2, 2008 e-mail from Kirk Hiller to Mark Mitchell regarding removal of P suffix |
| Exhibit No. 17 | October 6, 2008 e-mail from Kirk Hiller to Mark Mitchell regarding zone reclassification L08TY401 |
| Exhibit No. 18a-b | Copies of aerial photographs of subject property |
| Exhibit No. 19 | Copy of regional map |

The following exhibit was entered into the record on December 16, 2008:

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| Exhibit No. 20 | Affidavit of Publication dated November 13, 2008 |
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The following exhibits were offered and entered into the record on April 28, 2009:

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| Exhibit No. 21 | Photo montage (oversize board) |
| Exhibit No. 22 | Letter to James N. O'Connor from Gary D. Huff, Counsel for Applicants dated April 27, 2009 |
| Exhibit No. 23A | 1999 aerial of area |
| Exhibit No. 23B | 2008 aerial of area |
| Exhibit No. 24 | 2009 King County area map |
| Exhibit No. 25 | Google map of area; red highlighted area is approved mini storage |

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| Exhibit No. 26 | 2008 photograph - beginning road improvements depicted |
| Exhibit No. 27 | 2008 photograph - completed road improvements depicted |
| Exhibit No. 28 | Photograph of South 231st looking west to I-5 |
| Exhibit No. 29 | Photograph from Google Maps showing South 231st Street being built looking west to I-5 |
| Exhibit No. 30 | Photograph looking east of the I-5 off ramp |
| Exhibit No. 31 | Photograph looking northwest on South 236th Street |
| Exhibit No. 32 | Photograph looking at the property from 38th Avenue South |
| Exhibit No. 33-1 | City of Kent Comp Plan |
| Exhibit No. 33-2 | Property description of mini storage facility, west across Military Road in Kent, Parcel 1522049010 |
| Exhibit No. 33-3 | Property description of Sharma Amit, R-4 to immediate South, Parcel 8075400620 |
| Exhibit No. 33-4 | Property description of Singh Amrik, R-12 South of NB, Parcel 8075400560 |
| Exhibit No. 33-5 | King County on line permit applications report |
| Exhibit No. 33-6 | Property description of Sing Amrik, NB to immediate south, Parcel 8075400550 |
| Exhibit No. 33-7 | Property description of Pet Cemetery, Parcel 1522049053 |
| Exhibit No. 33-8 | Property description of Kent West LLC, Parcel 1522049053 |
| Exhibit No. 33-9 | Copy of Kent West LLC lease |
| Exhibit No. 34 | City of Kent staff report for September 10, 2008 Hearing Examiner Meeting |

JNOC:vsm

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